

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TERENCE D. MANNING,

Plaintiff,

V.

STATE OF WASHINGTON; WASHINGTON STATE PATROL; Washington State Patrol Trooper John Doe Clevenger, Jane Doe Clevenger, and their marital community; and Trooper Jane DuCommon, John Doe DuCommon, and their marital community.

## Defendants.

Case No. C05-5791RJB

ORDER ON PLAINTIFF'S MOTION  
PURSUANT TO CR 37(c)(1)  
ALLOWING WITNESSES  
DISCLOSED IN PLAINTIFF'S  
INITIAL DISCLOSURE APRIL 26,  
2006, TO TESTIFY AT TRIAL

This matter comes before the Court on the plaintiff's Motion Pursuant to CR37(c)(1) Allowing Witnesses Disclosed in Plaintiff's Initial Disclosure April 26, 2006, to Testify at Trial (Dkt. 57). The Court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

## I. BACKGROUND AND DISCUSSION

This suit stems from alleged mistreatment of plaintiff Terence D. Manning in the investigation of an alleged misdemeanor. Dkt. 1 at 3.. Dkt. 50 at 12, Dkt. 40 at 5, Dkt. 39 at 4.

The defendants filed a Motion in Limine to exclude witnesses that were not timely disclosed

1 in accordance with the initial disclosure deadline. The Court held that the plaintiff's initial disclosures  
2 were tardy. Dkt. 52. In accordance with Federal Rule 37(c)(1), the Court allowed the parties to be  
3 heard as to "whether exclusion of information contained in the plaintiff's tardy initial disclosures, or  
4 other sanctions, should be imposed." *Id.*

5 The plaintiff requests that no sanctions be imposed and that the tardy disclosure not be  
6 mentioned to the jury. Dkt. 58 at 4. The plaintiff contends that the tardy disclosure was harmless.  
7 According to the plaintiff, the defendants did not suffer prejudice as a result of the late disclosure  
8 because the witnesses were already known to the defendants and the plaintiff would be severely  
9 prejudiced if these witnesses were not allowed to testify. *Id.* at 3.

10 The defendants point out that disclosure obligations are not limited to witnesses who are  
11 unknown to the opposing party and contend that even if they were aware of the witnesses, they  
12 deserved timely disclosure of which witnesses the plaintiff would call at trial. Dkt. 59 at 2. Initial  
13 disclosures do not provide such information, however. They require only disclosure of witnesses  
14 *likely* to have discoverable information that the disclosing party *may* use to support its case and the  
15 subjects of such information. *See* Fed. R. Civ. P. 26(a)(1). The exclusion of all witnesses in the  
16 plaintiff's initial disclosures is an unduly burdensome sanction that is not justified by the defendants'  
17 generalized claims of prejudice. The Court should therefore decline to sanction the plaintiff, but the  
18 parties are cautioned that deadlines imposed by rule or by court order require compliance unless the  
19 Court grants an extension. This Order is without prejudice to the parties' rights to request exclusion  
20 of witnesses on other grounds.

21 **II. ORDER**

22 Therefore, it is hereby

23 **ORDERED** that plaintiff's Motion Pursuant to CR37(c)(1) Allowing Witnesses Disclosed in  
24 Plaintiff's Initial Disclosure April 26, 2006, to Testify at Trial (Dkt. 57) is **GRANTED** as follows:

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1 (1) Witnesses disclosed by plaintiff in the April 26, 2006, initial disclosures may not be excluded on  
2 the basis that those witnesses were not timely disclosed; and (2) sanctions are not warranted.

3 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of  
4 record and to any party appearing *pro se* at said party's last known address.

5 DATED this 1<sup>st</sup> day of December, 2006.

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8 Robert J. Bryan  
United States District Judge

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